

tion but that which is drawn between persons of sound mind, and those who are *non compos mentis*. All persons in the former condition of mind, not otherwise disqualified, may make a valid contract; but all contracts made by those in the latter situation are deemed utterly void.(q) And yet, according to this maxim, no man can be allowed to stultify himself; that is, to shew that he had not merely a weak mind, but that he was absolutely *non compos mentis*. If a man be of ever so feeble a capacity, short of lunacy, he may be allowed to prove that fact; or, in other words, *partially* to stultify himself in connexion with other circumstances, in order to shew that he had been defrauded. But if he be absolutely *non compos mentis*, he shall not be permitted to prove that fact, or to stultify himself *altogether*; although it would seem to be difficult to understand how the obtaining from a lunatic a conveyance of his property, can be otherwise considered, than as being in itself the strongest and most conclusive evidence of fraud. Hence, as it would seem, if the injured party should state, that being of a weak mind, he was imposed upon and defrauded; the defendant has only to prove an aggravation of his own iniquity, by shewing that the plaintiff was, in truth, at the time, not merely weak, but actually *non compos mentis*, and he may be at once silenced by this maxim.

It is said, that a man should not be permitted to stultify himself, "because, when he recovers his memory, he cannot know what he did when he was *non compos mentis*." But this cause of the rule, as thus expressed, conveys a contradiction in terms, a solecism in itself. A man in madness is not himself; his mind is aliened and gone; the rational power has left its tabernacle, and is from home. It would be just as reasonable to say, that he who is absent from his dwelling, should not obtain redress for any injury done to it during his absence, because when he returned home he could not know what had been done there while he was abroad; as that a person should not obtain redress by stultifying himself, because he could not know what he had done during the time he was insane. It has been well said, that he who jests upon a man who is drunk, injures the *absent*. But an innocent and unfortunate person is much more really and totally *absent* from himself in his madness, than a man in his drunkenness.(r)

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(q) 1 Fonb. 66.

(r) Dr. Rush, in his observations on the diseases of the mind, has frequent recurrence to the poets for illustrations of the nature of madness; because, as he says, they view the human mind in all its operations, whether natural or morbid, with a